THE HON'BLE MR. JUSTICE B. SUDERSHAN REDDY

AND

THE HON'BLE MR. JUSTICE S. ANANDA REDDY

WRIT PETITION NO. 14754 OF 1999

DATED: 08-11-2005

Between

Andromeda Foundation India (P) Ltd.,

a Private Limited Company having its

Registered Office at 1st Floor, Topaz Building,

Amrutha Hills, Greed Lands Road, Somajiguda,

Hyderabad – 500 082, represented by its

Dr. Sudhakar Krishnamurti.

..... PETITIONER

And

Director General of Health Services,

Medical General Section, Nirman Bhavan,

New Delhi and others.

..... RESPONDENTS

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

THE HON'BLE MR. JUSTICE B. SUDERSHAN REDDY

AND

THE HON'BLE MR. JUSTICE S. ANANDA REDDY

WRIT PETITION NO. 14754 OF 1999

ORDER: (per Sri B. Sudershan Reddy, J)

The impugned proceedings dated 09-12-1997 issued by the 1st respondent – Director General of Health Services, Medical General Section, New Delhi which is self-explanatory, in our considered opinion, does not suffer from any infirmities or errors requiring our interference in exercise of our jurisdiction under Article 226 of the Constitution of India.

The 1st respondent herein vide its letter dated 14-07-1997 required the petitioner to send its reply to the State Government with a copy to it explaining as to why the eligibility granted to it to avail and retain Customs Duty Exemption Certificate (CDEC) issued as per the provisions of Government of India notification No. 64/88-Cus., dated 01-03-1988 (for short 'the said notification) should not be withdrawn. In the show cause notice, it is clearly mentioned as to why the CDEC issued to the petitioner for import of the following equipments vide the department's letters

dated 13-12-1992, 29-12-1992 and 19-01-1993 should not be withdrawn:

i. Automatic semen analyzer (HTM – C Analyser).

ii. Cavamet.

iii. Space.

iv. Hand Held Recording Doppler (Es 1000 SP).

The petitioner was required to furnish the required information/documents to enable the Department to examine whether it fulfilled the conditions for issue of CDEC in terms of the said notification. The petitioner has been clearly put on notice to explain as to whether the medical equipment has been installed in the premises of the hospital and if so, the date of installation of each equipment; total number of OPD patients treated since installation of medical equipment year wise; total number of OPD patients treated free during the above period year wise; percentage of OPD patients treated free during the above period year wise. The petitioner was also required to furnish the details as to the total number of indoor patients treated since installation of the medical equipment year wise; total number of indoor patients belonging to families with an income of less than Rs.500/- per month treated during the above period year wise and total number of indoor patients belonging to families with an income of less than Rs.500/- per month treated free during the above period year wise. The petitioner was further required to furnish the details as to the total number of beds, if any, available and reserved for indoor patients belonging to families with an income of less than Rs.500/- per month.

The petitioner is stated to have sent letter dated 28-07-1997 with reference to the show cause notice dated 14-07-1997. Admittedly, the said letter has not been addressed through the State Government so as to enable the 1st respondent to verify from the State Government as to the correctness and genuineness of the data/information furnished by the petitioner. The State Government therefore admittedly did not forward its recommendation. The State Government, in fact, in their letter dated 15-09-1997 has intimated the 1st respondent that they did not receive any information from the petitioner in time and therefore, the question of submitting any verification report as such by them does not arise.

The so-called reply dated 28-07-1997 has been verified and taken into consideration by the 1st respondent and on such verification, it was found that the petitioner did not furnish the required details, more particularly, with regard to total number of OPD cases, free OPD/IPD cases and the infrastructure earmarked for providing free service etc. It was found that the information furnished by the petitioner does not reflect the position regarding the OPD/IPD facilities being extended by the institute, particularly the free services that are required to be given to patients with income less than Rs.500/- per month. The details and information with regard to availability of infrastructure has not been furnished in the prescribed proforma and instead the data furnished is scanty in a format chosen by the petitioner. It was under those circumstances, the 1st respondent herein has come to the conclusion that the petitioner is only a diagnostic center not having indoor patients treatment facility and therefore, does not fulfil the conditions for availing and retaining CDEC issued to it under the said notification by the Ministry of Finance.

Learned counsel for the petitioner, Sri S. Ravi, mainly contended that the impugned proceedings dated 09-12-1997 suffer from non-application of mind for the authority did not consider the objections submitted by the petitioner in a fair and reasonable manner. Learned counsel maintains that the petitioner did not avail the facility of importing “Hand Held Recording Doppler (ES 1000 SP). The impugned order proceeds on the assumption as if the petitioner – institute had imported the said machinery also. This one fact, according to the learned counsel for the petitioner, is enough to hold that the 1st respondent did not apply its mind to the facts and passed the order in a casual and mechanical manner.

We are not impressed by the submission made by the learned counsel for the petitioner and find it difficult to sustain the same. We have perused the reply dated 28-07-1997 submitted by the petitioner which is nothing but an annexure titled as annexure ‘E’. It is not known as to whether the petitioner submitted any other detailed explanation as asserted by it. That at any rate, a copy of any such explanation is not made available for our perusal. The annexure does not disclose the petitioner having raised any dispute about the import of the machinery “Hand

Held Recording Doppler (ES 1000 SP)". The petitioner did not raise any dispute about the same. However, an attempt was made by the learned counsel for the petitioner to invite our attention to the memorandum of representation stated to have been submitted by the petitioner to the 1st respondent herein, which even according to the petitioner, was made after receipt of the impugned order passed by the 1st respondent. Even if the petitioner has raised any dispute with regard to the import of the said machinery in the memorandum made subsequent to the passing of the impugned order is of no consequence since we are concerned in this writ petition as to the validity of the impugned order. The 1st respondent was not required to consider the question as to whether the petitioner had in fact imported "Hand Held Recording Doppler (ES 1000 SP)" since no such issue has been raised. That apart, admittedly CDEC issued to the petitioner does contain the particulars of the said machinery, which was sought to be imported. It is not necessary to express any opinion whether in fact the petitioner imported any such machinery even though such CDEC has been granted. For the aforesaid reasons, it is not possible to hold that the impugned order suffers from vice of non-application of mind.

Be that as it may, even in this writ petition no material is placed before this Court as to whether any infrastructure has been earmarked by the petitioner for providing free service to OPD as well as IPD patients with income less than Rs.500/- per month. It is one of the important considerations that had received the attention of the Department for the purpose of granting CDEC. Obviously, as observed by the 1st respondent, the petitioner did not earmark and provide any infrastructure as such for providing free treatment to OPD/IPD patients nor there is any material to show that the petitioner is not a diagnostic center but having indoor patient treatment facilities also. In the circumstances, the conclusion drawn by the 1st respondent that the petitioner is not entitled for the benefit under the said notification is not vitiated for any reason requiring our interference. No other point is urged.

We find no reason to interfere with the impugned order. The Writ Petition is accordingly dismissed without any order as to costs.

(B. Sudershan Reddy, J)

08..11..2005

(S. Ananda Reddy, J)

ks